IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1340 of 2006

T.Ponni .. Appellant

Vs.

1. The District Collector
   Tiruvallur District, Tiruvallur.

2. The Returning Officer/
   Block Development Officer
   Ambattur, Tiruvallur District.

3. Susila .. Respondents

Appeal against the order dated 26.10.2006 made in W.P.No.40390 of 2006 praying for issue a writ of Mandamus permitting the petitioner to take oath or contest or cast her vote for the election to the post of Vice President to Pammadhukulam Village Panchayat, Tiruvallur District to be held on 25.10.2006 or some other day in terms of the declaration certificate dated 18.10.2006 issued by the Second respondent.

For Appellant : Mr.G.Ethirajulu
For Respondents 1&2 : Mr.Raja Kalifulla
Government Pleader

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

Heard Mr.G.Ethirajulu, learned counsel appearing for the appellant as well as Mr.Raja Kalifulla, Government Pleader for respondents 1 and 2.

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2.1. The grievance of the appellant is that in spite of a declaration declaring that she got elected as a Councillor from Women General Ward II of Pammadhukulam Village Panchayat, as per Form 26 duly issued by the second respondent and served on her, she had not been permitted to take oath on 25.10.2006. Hence, the appellant filed W.P.No.40390 of 2006 seeking a writ of Mandamus permitting her to take oath or contest or cast her vote for the election to the post of vice President to Pammadhukulam Village Panchayat, Tiruvallur District.

2.2. The learned single judge, after hearing the respondents and recording the statement made on behalf of the respondents that one Susila had taken oath as Ward Member representing Women General Ward II of Pammadhukulam Village Panchayat, dismissed the writ petition. Hence, the above appeal.

3.1. The learned Government Pleader produced the fax copy of the relevant records relating to the election of both the appellant as well as the third respondent representing Women General Ward II of Pammadhukulam Village Panchayat. It appears that even though the appellant was declared elected initially, declaration of her election as Ward Member referred to above was immediately cancelled by the second respondent as there was a mistake in totalling the votes polled in favour of the third respondent.

3.2. The fax copy of the records placed before us discloses that the third respondent, who stood in the symbol of 'bucket' got 224 votes in Booth No.29M, 225 votes in Booth No.29W, 116 votes in Booth No.30AV and 10 votes in Booth No.31AV, totalling to 575 votes. Whereas, the appellant got 80 votes in Booth No.29M, 77 votes in Booth No.29W, 92 votes in Booth No.30AV and 233 votes in Booth No.31AV totalling to 571 votes. Obviously, the third respondent has got more votes than that of the appellant. However, the second respondent committed an arithmetical error in totalling the votes polled in favour of the third respondent and declared the appellant got elected.

3.3. The learned Government Pleader explains that in view of the above arithmetical error in totalling, the second respondent cancelled the declaration of the election of the appellant served on her in Form 26 and declared the third respondent as elected from Women General Ward II of Pammadhukulam Village Panchayat.

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3.4. The learned Government Pleader also fairly submits that before cancelling the declaration of the election of the appellant, the second respondent had not given any opportunity to the appellant, as it was only an arithmetical error crept in totalling, which was noticed by him within ten minutes after issuing the declaration necessitating him to cancel the declaration of the appellant and to issue declaration in favour of the third respondent, which was also published in the local edition of daily Dina Thanthi, based on which, the third respondent was also permitted to take oath.

4.1. From the above backdrop of the case, learned counsel appearing for the appellant contends that the appellant having declared as elected and was served Form 26, the second respondent ought not to have tampered with such declaration, and assuming there is an arithmetical error in totalling, the only option left to the contesting candidate is to raise an election dispute in the manner provided under the Act, as the second respondent has no power to suo motu cancel the result already declared.

4.2. In alike manner, the learned Government Pleader contends that assuming the second respondent had committed a mistake by suo motu cancelling the declaration of the election of the appellant and the appellant is aggreived by the same, the only option left to the appellant is to raise an election dispute in the manner provided under the Rules, but not to approach this Court invoking Article 226 of the Constitution of India.

4.3. However, as the number of votes polled for the respective contesting candidates and the number of invalid votes in each of the booth tallies with the number of total votes polled, the learned Government Pleader fairly comes forward that the first respondent would have no objection to give an opportunity to the appellant tomorrow, i.e. 28.10.2006 at 11 am in the office of the first respondent, who is also the District Election Officer and to pass appropriate orders afresh in the matter and till then, if necessary, to exercise the power under Rule 99 of the Tamil Nadu Panchayat (Elections) Rules 1995, which deals with the power to postpone or advance the date of election.

5. We have given our careful consideration to the submissions of both sides.

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6.1. It is settled law that once an election proceedings was set on motion, it may not be proper for this Court, by exercising the power under Article 226 of the Constitution of India, to interfere with such election proceedings, nor to postpone or stop the election process, as it is within the wisdom of the Election Commissioner to take appropriate decision in the matter, to which, both the parties have agreed to work out their rights in the manner known to law.

6.2. Appreciating the stand taken by the learned Government Pleader in the instant case and particularly, in view of the fact that the learned counsel for the appellant has agreed to appear before the first respondent Collector at 11 am on 28.10.2006, we are of the considered opinion that suffice it to permit the first respondent Collector to hear the appellant with regard to the cancellation of the result declaring her election representing Women General Ward II of Pammadhukulam village Panchayat and to pass appropriate orders in the matter, in the light of entries in the original records pertaining to Part II of Form 20 and Form 22. However, no adverse order shall be passed against the third respondent without hearing her. If the facts and circumstances warrant, the first respondent Collector is at liberty to invoke the power under Rule 99 of the Tamil Nadu Panchayats (Elections) Rules, 1995 for postponing the election to the office of Vice Chairman of the Village Panchayat, till the full fledged enquiry is conducted and appropriate order is passed in that regard, as agreed to by the learned Gsovernment Pleader. If the appellant is still aggrieved, she is at liberty to work out her rights in the manner known to law.

The writ appeal is disposed of accordingly. No costs. Consequently, connected M.Ps. are closed.

kpl

Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

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To

1. The District Collector
   Tiruvallur District, Tiruvallur.

2. The Returning Officer/
   Block Development Officer
   Ambattur, Tiruvallur District.

3. Ms. Susila
   W/o Ganesan,
   Perumal Koil Street, Konimedu
   Pammadhukulam, Chennai 600 052

NM(26.10.2006)

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